



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 23, 1997

Ms. Mary Kay Fischer  
City Attorney  
City of Texas City  
P.O. Drawer 2608  
Texas City, Texas 77592-2608

OR97-2367

Dear Ms. Fischer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110004.

The City of Texas City (the "city") received an open records request for records regarding the city's regulation of tow truck services. You indicate that the city has released to the requestor some records responsive to his request. You seek to withhold, however, four memoranda from the city attorney's office pursuant to section 552.107(1) of the Government Code.

Section 552.107(1) of the Government Code excepts information from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5, 462 (1987) at 13-14. "Privileged information" is information that reflects either confidential communications from the client to the attorney

or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. Rule 503(a)(5) of the Texas Rules of Civil Evidence defines a "confidential communication" as a communication

not intended to be disclosed to third persons other than those to whom disclosure is made *in furtherance of the rendition of professional legal services* to the client or those reasonably necessary for the transmission of the communication. [Emphasis added.]

We have reviewed the documents that you wish to withhold and agree that three of these documents, or portions thereof, consist of privileged communications for purposes of section 552.107(1). One of the documents, however, consists of neither a client confidence nor an attorney's legal opinion or advice and thus does not appear to be a privileged confidential communication. Thus, we conclude that this particular document is not the type of information that is excepted from disclosure under section 552.107(1) of the Government Code. We have marked the information that the city may withhold pursuant to section 552.107(1); the remaining information must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/RWP/ glg

Ref.: ID# 110004

Enclosures: Marked documents

cc: Mr. Blu Shields  
P.O. Box 2550  
Galveston, Texas 77553-2550  
(w/o enclosures)